

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2007

CORAM

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Second Appeal No.732 of 1995

1. Mr.K.Subramanian (died)
2. S.Vanaja
3. S.Saravanan
4. S.Valli ... Appellants.

[Appellants 2 to 9
brought on record as
L.Rs. Of the deceased
first appellant in
CMP.799 to 801 of 1998
dated 03~February~1998.]

Vs

Ramabadra Reddiar ... Respondent.

Prayer:

Second appeal against the Judgment and Decree passed in A.S.6 of 1993 dated 18.4.1994 on the file of the Subordinate Judge, Villupuram, against the Judgment and Decree in O.S.No.645 of 1985 dated 27.8.1992 on the file of the District Munsif, Tirukkoilur. For Appellant : M/s.S.Krishnaswamy

For Respondent : M/s.N.Rajan

J U D G M E N T

The plaintiff is the 1st appellant. He filed a suit for declaration and injunction. According to him, the suit property measures 50" x 85". On appeal, the learned Appellate Judge held that all that the plaintiff may be entitled would be for an extent of 50" x 30" and not anything more. The decree is rather unhappily awarded. In any event, the plaintiff has filed the second appeal raising the following substantial questions of law:- 1.Whether the lower Appellate Court failed to rely upon the principle that boundaries will prevail over the area in the facts and circumstances of the case, when the area is mistakenly carried over in the documents? And 2.Whether the lower Appellate Court has wrongly relied upon Exs.B-1 to B-4 in which the appellant is not a party which resulted in miscarriage of justice?

2. The suit property has passed through several hands over several years. There was a mortgage, Ex.A-1, in 1943 and a sale deed, Ex.A-2, in 1948 purchased by the 1st appellant/plaintiff in 1969, bokyam of half of the property, Ex.A-4, in

1970, Bokyam of the other half of the property, Ex.A-5, in 1970, redemption, Exs.A-7 and A-8, in 1979, then another mortgage, Ex.A-6, in 1979, mortgage again discharged, Ex.A-9, in 1983. According to the appellants, there are two huts bearing door numbers 29 and 30. The plaintiff is in possession in door No.30 and a tenant is in possession in door No.29. The suit was necessitated because the first defendant in the suit, the respondent herein, filed a suit for recovery of possession against the 2nd defendant. The suit was decreed. The first appeal and the second appeal filed by the 2nd defendant were also dismissed. Thereafter, the 1st defendant, respondent herein, sought to execute the decree. Then, the plaintiff came to know that his property was also included as the suit property in 1st defendant's suit and therefore, the suit was filed. The respondent resisted the suit saying that even before Ex.A-1, which is dated 19.01.1943, his mother had obtained delivery of the entire property, viz., 'B' Schedule property, which includes 'A' Schedule property and therefore, the plaintiff is not entitled to the decree. In all the documents, the four boundaries are specified. The trial Court relying on Dina Malar Publications -v- The Tiruchirappalli Municipality (1984 II MLJ 306) = (1984) 97 L.W. 365, held that when boundaries are mentioned, they would prevail over the extent and notwithstanding the fact, the extent mentioned in those documents is 50" x 30", the plaintiff would be entitled to 85" x 50", since that is the extent enclosed by the four boundaries mentioned in the documents. The Appellate court, on the other hand, held that boundaries would prevail over the extent only if there is ambiguity or lack of clarity in the extent. If the extent is clearly mentioned in the documents, then it would be clear that what was intended to be conveyed. Therefore, the first Appellate Court held that on the basis of Ex.A-3, the plaintiff purchased the property from one Subharayan to an extent of 50" x 30" and further held that if at all the plaintiff is entitled to any extent, it would only be for this extent. Against that, the present second appeal has been filed.

3. The learned counsel for the appellants strongly contended that merely because there was some discrepancy in the extent, the plaintiff's right to 85" x 50" cannot be taken away. The learned counsel read the recitals in all the documents to show, how the plaintiff has traced his right to the property. The learned counsel also pointed out the Advocate Commissioner's plan and sketch, which would show the manner, in which, the plaintiff has enjoyed the property and the extent. The learned counsel correlated the four boundaries and showed on the three boundaries, viz., north, west and east tally. It is only with regard to the southern boundary, there is some variation. But in any event, it is clear from the documents, what was intended to be purchased, was the entire extent enclosed in the four boundaries and therefore, the lower Appellate Court had clearly misdirected itself in the construction of the documents. The learned counsel, specifically pointing out Ex.A-3, which reads as follows, [VERNACULAR (TAMIL) PORTION DELETED]

said that the way this should be construed is that the building was an extent of 50" X 30" and the remaining vacant land was 30" x 20" and therefore, if the total extent is calculated, it would be 50" X 30" + 30" x 20", which would be 80" x 50" and if so calculated, the plaintiff's title would clearly be established.

4. The learned counsel for the respondent submitted that if at all the plaintiff is entitled to a decree, it is only for 50" x 30" and pointed out the evidence of P.W.1, where there is a clear admission, that what was purchased was only 50'X 30" and nothing more. The learned counsel also relied on P.W.1's evidence, where it is stated that he has purchased only a portion of item 'A' of the suit schedule property. The learned counsel submitted that the southern boundary is Govindarajan's property, as seen from even Ex.A-3, and it is this Govindarajan, against whom, he filed the suit and obtained a decree and at the time of execution, he was thwarted by the plaintiff by filing a suit. The learned counsel also submitted that for the first time in the second appeal, the stand is taken that what was conveyed under Ex.A-3 was 50" x 30", on which,

super structure stands and 30" x 20" is the vacant land. The learned counsel submitted that the proper way to construe the document, which is the way, the first Appellate Court has done, is that in the extent of 50" x 30", the super structure stands on 30" x 20" and the remaining is vacant land. Even the plaintiff had not understood the measurement as it is now explained by the learned counsel. The learned counsel for the respondent also submitted that if under Ex.A-3, the plaintiff had purchased 50" x 30" + 30" x 20", there was no occasion for him to plead again and again in the plaint that there was some error in the extents measured in the sale deed. So, it is clear that the extent as per the documentary evidence is 50" X 30". The learned counsel submitted, in fact, even with regard to the description of boundaries, the plaintiff has come forward with a case that there was some misdescription. The learned counsel for the respondent submitted that the lower Appellate Court had rightly rejected the case of the plaintiff.

5. There is no dispute regarding the fact that in each of the document relied on by the plaintiff the extent is clearly marked. In Kuppuswami Naidu -v- Krishnasamu Naidu (2004(5) CTC 344), it was held as follows:- "Transfer of Property Act, 1882 Discrepancy regarding measurement Sale Deed describing area conveyed and specifying boundaries Boundaries mentioned in earlier document of title and later document mentioned identical boundaries Boundaries when clearly spelt out in document will have to be accepted as clear reflection of intention of grantor and true extent covered by such document Area found in later document though larger than first document accepted as correct as boundaries of both documents were identical." In Roohnisha Beevi and 15 others -v- A.M.M. Mahudu Mohamed and 29 others (1998-1 L.W. 244), it was held as follows:

"Evidence supplied by boundaries, extent, survey numbers and lakhoms (Paimash numbers) are the determining factors when the identity of the property is put in issue. In case of conflict, usually boundaries predominate and the rest is regarded as erroneous or inaccurate descriptions.

Erroneous statement of survey numbers or omission to state it should be rejected as falsa demonstratio."

In Subramania Bathar -v- Srinivasa Bathar and 9 others (2002-1 L.W. 120) it was held as follows:

"It is established legal position that boundaries would prevail over measurements in case there is conflict. In Dina Malar Publications v The Tiruchirappalli Municipality (1984 II MLJ 306) = (1994) 97 L.W. 365) R.Sengottuvelan, J. after referring to a number of decisions set out the principles underlying the concept. (1) In case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent;

(2) Only in the absence of definite materials to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document; (3) If the recitals in the documents and the circumstance of the case show that a lesser extent only was conveyed then the area covered by boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries."

6. In this case, in each of the documents, there is a specific mention as 50" x 30", especially in Ex.A-3, which is the document under which the plaintiff has purchased the property and if so, the plaintiff is not entitled to anything more. The judgment of the Appellate Court is confirmed. However, while drafting the decree, it may be specifically mentioned that the suit is partially decreed and the plaintiff is entitled to 50" x 30" (i.e., East West-50 x North South-30).

7. For the above said reasons, the substantial questions of law raised by the appellants are not answered in favour of the appellants. The second appeal is dismissed. However, there will be no orders as to costs. bs/

To

1. The Subordinate Judge,
Villupuram.

2. The District Munsif,
Tirukkoilur.

[PRV/10306]